
Central Valley Regional Water Quality Control Board

4 September 2019

Conrad Luna
Hilbers Incorporated
770 N. Walton, #100
Yuba City, CA 95993

CERTIFIED MAIL
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OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY, HILBERS NEW HOME COMMUNITIES LP, TIMBERWOOD ESTATES, NEVADA COUNTY, WQID 5S29C381693

This letter contains an offer from the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team to settle claims for administrative civil liability arising out of alleged violations by Hilbers New Home Communities LP (Discharger) of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at the Timberwood Estates construction project located on Brunswick Road in Grass Valley (Project). As the owner of the Project and the legally responsible person enrolled in the General Permit, the Discharger is responsible for complying with all elements of the General Permit and is strictly liable for penalties associated with non-compliance. Hereafter, this letter will be referred to as the "Settlement Offer." This Settlement Offer was prepared following a meeting with the Discharger on 19 August 2019 to discuss the violations and clarify the factors used to prepare the Settlement Offer.

This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violations through payment of one hundred sixty thousand eight hundred seventy-five dollars (\$160,875).

Please read this letter carefully and respond no later than 4 October 2019.
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DESCRIPTION OF VIOLATIONS

On 28 September 2018, Central Valley Water Board staff inspected the Project and observed numerous conditions that violated or threatened to violate the erosion control requirements of the General Permit. Board staff sent an email to the Discharger requesting information related to the Project.

A follow-up inspection was conducted with the Project's Superintendent on 29 November 2018 during a rain event. Board staff observed extensive erosion on the Projects slopes and extensive rilling on the roadway. The turbidity of the storm water

KARL E. LONGLEY ScD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

runoff from the Project was measured to be over 1,000 Nephelometric Turbidity Units (NTUs) by Board staff. A Notice of Violation (NOV) for erosion control BMP, sediment control BMP, and narrative effluent limitation violations that were observed during the 29 November 2018 inspection was issued on 13 December 2018.

Additional follow-up inspections were conducted with the Project's Superintendent during a rain event on 8 and 9 January 2019. Board staff observed that the bonded fiber matrix (BFM) erosion control had failed in several areas and that the BFM covered less than 50% of the soil. Plastic had been installed to cover several areas. Board staff advised the Superintendent that additional erosion and control BMPs were needed.

A follow-up inspection was conducted on 18 January 2019 with the Project's Superintendent, SWPPP consultant, contractor, and representatives with the City of Grass Valley. During the inspection, Board staff observed that the erosion control BMPs installed had failed and several areas still did not have erosion control BMPs installed. Rilling and evidence of an offsite sediment discharge were also observed. A second NOV for erosion control BMP, sediment control BMP, and narrative effluent limitation violations that were observed during the 18 January 2019 inspection was issued on 23 January 2019.

Another follow-up inspection was conducted on 14 February 2019 with the Project's Superintendent. Turbid storm water runoff in excess of 250 NTU caused by a lack of adequate erosion and sediment control BMPs was observed. A third NOV for erosion control BMP, sediment control BMP, and narrative effluent limitation violations that were observed during the 14 February 2019 inspection was issued on 8 March 2019.

An inspection was conducted during a rain event of 26 February 2019. Board staff observed that the Discharger was in the process of installing an active treatment system (ATS). According to the ATS operators, the system was scheduled to be completed and operational by the end of the day. Board staff observed turbid storm water discharges from the Project during the inspection.

On 6 March 2019, Board staff inspected the Project during a rain event and observed that the ATS was fully operational.

The Water Board's 13 December 2018, 23 January 2019, and 8 March 2019 Notices of Violation and 28 September 2018, 29 November 2018, 8 January 2019, 9 January 2019, 18 January 2019, and 14 February 2019 Inspection Reports which describe the violations were previously sent to the Discharger and are available in SMARTS.

This Settlement Offer alleges the Discharger violated the following two sections of the General Permit : (1) General Permit Attachment D, Effluent Standard A.1.b. by discharging turbid runoff from the Project without using BMPs that achieved the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard; (2) General Permit Attachment D, Erosion Control

E.1. by failing to implement appropriate erosion control BMPs on disturbed soil areas of the Project during rain events.

STATUTORY LIABILITY

Pursuant to Section 13385 of the California Water Code, the Discharger is liable for administrative civil liabilities of up to \$10,000 per violation for each day in which the violation occurs and \$10 per gallon discharged in excess of the first 1,000 gallons. The statutory minimum civil liability is the economic benefit resulting from the violations. The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) states that the minimum penalty is to be the economic benefit plus 10%. For the violations described in the attachments, the maximum potential liability for the violations is over \$500,000 and the minimum liability is \$34,109.

PROPOSED SETTLEMENT OFFER

The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of \$160,875. This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13385(e) using the penalty methodology set forth in the Enforcement Policy. The enclosed "Penalty Calculation Methodology" describes in detail how the penalty amount was calculated. The Prosecution Team believes that the proposed resolution of the alleged violation(s) is fair and reasonable, fulfills the Central Valley Water Board's enforcement objectives, and is in the best interest of the public.

Should the Discharger choose *not* to accept this Settlement Offer, please be advised that the Central Valley Water Board Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Central Valley Water Board Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine the number of gallons discharged and whether additional violations occurred. Any additional violations and gallons of discharge subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a contested enforcement action and settle the alleged violation(s) by accepting this Settlement Offer. Please note that the Settlement Offer does not address liability for any violation that is not specifically identified in the attached inspection reports.

Responding to the Settlement Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* shall be completed and submitted no later than **4 October 2019** to the following address:

Central Valley Regional Water Quality Control Board
Attention: Michael Fischer, Enforcement Section
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Important! - Upon receipt of the *Acceptance and Waiver*, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the Central Valley Water Board's Executive Officer to formally endorse the *Acceptance and Waiver* as an order of the Central Valley Water Board. An invoice will then be mailed to the Discharger requiring payment of the administrative civil liability within 30 days of the date of the invoice.

If, however, substantive comments are received in opposition to this settlement and/or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

If you have any questions about this settlement offer, please contact Michael Fischer at (916) 464-4663 or at michael.fischer@waterboards.ca.gov.

Original Signed By

ANDREW ALTEVOGT
Assistant Executive Officer

Enclosures: Offer to Settle Administrative Civil Liability
Acceptance of Settlement Offer and Waiver of Right to a Hearing
Penalty Calculation Methodology

cc: Greg Gholson, U.S. EPA, Region IX, San Francisco
Nickolaus Knight, Office of Enforcement, State Water Board, Sacramento
Bayley Toft-Dupuy, Office of Chief Counsel, State Water Board, Sacramento
Patrick Pulupa, Executive Officer, Central Valley Water Board, Rancho Cordova

ORDER NO. R5-2019-0525
ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING
FOR
HILBERS NEW HOME COMMUNITIES LP
TIMBERWOOD ESTATES
NEVADA COUNTY

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* to the Central Valley Water Board, Hilbers New Home Communities LP. (Discharger) hereby accepts the Settlement Offer described in the letter dated 4 September 2019 and titled *Offer to Settle Administrative Civil Liability, Hilbers New Home Communities LP, Timberwood Estates, Nevada County, WDID 5S29C381693* and waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to perform the following:

- Pay an administrative civil liability in the sum of **one hundred sixty thousand eight hundred seventy-five dollars (\$160,875)** by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account". This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at the Timberwood Estates construction project.

The Discharger understands that by signing this *Acceptance and Waiver*, the Discharger has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation(s). The Discharger understands that this *Acceptance and Waiver* does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the Discharger, the *Acceptance and Waiver* shall be returned to the following address:

Central Valley Regional Water Quality Control Board
Attention: Michael Fischer, Enforcement Section
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

The Discharger understands that federal regulations require the Prosecution Team to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action for violations of an NPDES permit, such as the

General Permit. Accordingly, this *Acceptance and Waiver*, prior to being formally endorsed by the Central Valley Water Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment.

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the Central Valley Water Board's Executive Officer for formal endorsement on behalf of the Central Valley Water Board.

The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

The Discharger understands that once this *Acceptance and Waiver* is formally endorsed, the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this *Acceptance and Waiver*.

HILBERS NEW HOME COMMUNITIES LP

By: Original Signed By Doug Heacock

Title: COO, Hilbers Inc.

Date: 7 October 2019

IT IS SO ORDERED, pursuant to California Water Code section 13385.

By: PATRICK PULUPA, Executive Officer

Date: _____